



Paper No. 6

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**JAN 28 2003**

**OFFICE OF PETITIONS**

In re Application of  
Charles J. Kring et al.  
Application No. 10/057,827  
Filed: January 25, 2002  
Attorney Docket No. 020995-000110US  
For: METHOD AND SYSTEM FOR POLICY BASED  
MANAGEMENT OF MESSAGES FOR MOBILE  
DATA NETWORKS

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed August 20, 2002.

The petition under 37 CFR 1.47(a) is **dismissed**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," should only address the deficiencies noted below, and may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Extensions of time remain governed by 37 CFR 1.136(a).

The above-identified application was filed on January 25, 2002, without an executed oath or declaration. Accordingly, on February 20, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, among other items, an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, and oath or declaration); (2) an acceptable oath or declaration in compliance with 35 USC §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner has failed to satisfy item (1) set forth above. Petitioner has failed to establish that the inventor either cannot be reached or that the inventor received the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

The declaration of Charles J. Kring indicates that the "'520 application and a declaration" were sent to the non-signing inventor at the non-signing inventor's last known address in January, 2002. Declarant further states that a scheduled meeting with the inventor for the purpose of signing a declaration for the instant application was canceled July 25, 2002. Declarant further indicates that an attempt to email a copy of the declaration to the non-signing inventor on August 7, 2002 was unsuccessful. Declarant also states that on August 20, 2002, he was notified that the non-signing inventor was "on vacation and had no access to a FAX machine" and that the non-signing inventor "promised to fax the signed declaration on August 21, 2002." Despite these efforts, petitioner indicates an executed declaration has yet to be received.

Petitioner is reminded that before a constructive refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. Petitioner has provided no evidence that the non-signing inventor was ever presented with a complete copy of the application papers (specification, claims, drawings, oath or declaration) for the instant application. While the declaration of Charles J. Kring indicates a copy of the parent application was forwarded to the non-signing inventor at the non-signing inventor's last known address, there is no indication that the inventor ever received the application papers for the instant application and thereafter constructively refused to execute the declaration.

Moreover, as to Charles J. Kring's declaration that the non-signing inventor was on vacation, petitioner is reminded that the mere fact that the inventor is "on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47." See, MPEP 409.03(d).

Any renewed petition should be accompanied by evidence to sufficiently establish that the non-signing inventor was sent a complete copy of the application papers and thereafter refused to execute the declaration. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. Petitioner may wish to provide the Office copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor receives the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 South Clark Place  
Arlington, Virginia

Telephone inquiries should be directed to Huyen Le at (703) 305-1645.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy